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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,338	01/19/2001	William Richard Dyer	0914-1464	7156

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ROTHWELL, FIGG, ERNST & MANBECK, P.C.
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WASHINGTON, DC 20005

EXAMINER

JARRETT, SCOTT L

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/764,338

Applicant(s)

DYER, WILLIAM RICHARD

Examiner

Scott L. Jarrett

Art Unit

3623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): USC 112(2) rejection of Claims 4, 6, 7, 9 and 11.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Susanna Diaz
SUSANNA M. DIAZ
PRIMARY EXAMINER
AU 3623

Continuation of 11. does NOT place the application in condition for allowance because: The USC 112(2) rejections of Claims 4, 6, 7, 9 and 11 are withdrawn due to the applicant's amendment filed August 22, 2005 which amended claims 4, 6, 7, 9, and 11; consequently none of the claims stand rejected under USC 112 (1) or (2).

In Applicant's remarks of August 22, 2005 applicant argues that the USC 101 rejection of Claims 1-17 is improper as the invention does not need to be in the technological arts as stated by the examiner (Page 5). Examiner respectfully disagrees the two prong test recited in both the last two office actions and further clarified in the office action dated May 24, 2005 clearly states the requirement that the invention be in the technological arts and produce a useful, concrete and tangible result (Pages 4-8).

The Applicant then argues that the phrase "network" demonstrates that claimed invention is in the technological arts as claimed. Examiner disagrees that recitation of the phrase "network", which for example could be interpreted as the the plain old telephone system (POTS), does not confer statutory status on the claims as a whole.

In an effort to continue to advance the prosecution of this case examiner suggest applicant incorporate language into claims 1-17 that the method for surveying an online user is implement on a computer (computerized) and that at least one of the method steps is performed by a computer to overcome the USC 101 rejection of Claims 1-17. However amending the claims as suggested will not place the application in a condition for allowance as the proposed amendments do not address the standing USC 103(a) rejection(s) of Claims 1-17.

In Applicant's remarks of August 22, 2005 applicant argues that the USC 103(a) rejection of Claims 1-17 fails to make a prima facie case of obvious due to at least a lack of motivation to combine Pitkow and Dyer (Page 7). Examiner respectfully disagrees both Pitkow and Dyer are in an analogous art/field of endeavor of user surveys, Pitkow teaches a method for conducting any of a plurality of different/various surveys utilizing Internet technologies (Final Office Action: Pages 13-14).